

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 906 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY KUMAR GUPTA

CHAIRMAN AND MANAGING DIRECTO

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 906 of 2000
MR PK JANI for Petitioners No. 1-4
Mr.D.P.Joshi, Asst.PUBLIC PROSECUTOR for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/11/2001

ORAL ORDER

The petitioners herein are the accused persons in
a complaint lodged by the respondent No.2 in the court of

Ld.JMFC, Panch Mahals at Godhra being Cri.Inq.Case No.216/99 for offences punishable under sections 628 & 629 of the Companies Act, 1956 and sections 465, 468 and 114 of IPC. The complaint came to be filed on December 6, 1999 and the Ld.JMFC sent the complaint for investigation to Godhra Town Police Station under section 156(3) of Cr.P.C. Aggrieved by the said order of sending the complaint for investigation to the police, present petition is preferred under section 482 of Cr.P.C. seeking quashing of Criminal Inquiry Case No.216/99 and the quashing of the said order of the Ld.JMFC, Godhra. By way of interim relief, the stay of said order pending the final disposal of the petition was sought and this court while issuing notice granted the interim relief to that effect by order dated 21.2.2000.

2. The facts stated can be stated, in brief, as under:

(i) The complainant is the shareholder of the Company known as M/s Gujarat Ambuja Cotspin Ltd which came to be amalgamated with M/s Gujarat Ambuja Proteins Ltd and ultimately amalgamated with M/s Gujarat Ambuja Exports Ltd. Petitioner No.1 is the Chairman-cum-Managing Director of the said company, petitioner No.2 is the Managing Director of the said company, petitioner No.3 is the Secretary of the said company and the petitioner No.4 is the Auditor of the said company. Three Company Petitions, i.e. Company Petition Nos 140, 141 & 142/98 came to be preferred before this court and after following due procedure an order came to be passed by this court in the said company petitions on 17.12.1998 permitting the amalgamation overruling the objections raised before it including the objection regarding non-compliance of Section 53 of the Companies Act.

(ii) It is alleged by the complainant that there was gross non-compliance of Section 53 of the Companies Act read with Rule 73 of the Companies (Court) Rules, 1959 and notices to the shareholders and creditors were not sent under postal certification and whereas in the accounts postage for postal certification has been debited and the amount of Rs.2,75,000/- has been siphoned out and pocketed by the petitioners-accused. The learned Magistrate, therefore, passed an order observing that since the allegations made in the complaint are serious and it may require making of panchnama and arrest of accused persons the complaint is required to be sent to police for investigation as provided under section 156(3) of Cr.P.C. and, hence, this petition is preferred.

3. Mr.P.K.Jani, Ld.Advocate appearing for petitioners has raised following contentions:

- (i) That the complaint could not have been preferred at Godhra as the Registered Office of the company is situated at Ahmedabad, and only the court at Ahmedabad will have jurisdiction.
- (ii) The complainant had notice of meeting. He had not raised any objection to the amalgamation and by preferring this complaint, an attempt is made to override the order of amalgamation passed by this court.
- (iii) The petitioner No.3 came to be appointed as Company Secretary, for the first time, on 12.11.1998 and the petitioner No.4 came to be appointed as Auditor, for the first time, on March 13, 1999. The alleged incident had occurred much prior thereto and, therefore, they could not have been impleaded as accused persons.
- (iv) The complainant has remedy of preferring Company Petition before this Court or approaching the Registrar of Companies with an appropriate application.

4. Mr.Jani submitted that an attempt is made by the complainant to set at naught the amalgamation which has been effected on the basis of the order passed by this court. If the order of the learned Magistrate is permitted to stand, it would create a situation whereby the Investigating Officer will investigate into the propriety of the order of this court permitting the amalgamation of the company. Mr.Jani submitted that, in fact, these aspects were considered by the learned single judge and turned down when the objection was raised by one of the shareholders in those petitions. He submitted that a Chairman was appointed to conduct a meeting of shareholders who submitted his report also. It is only as an afterthought that this complaint is filed. Mr.Jani submitted that even as per the communication received by the complainant from the Chief Post Master General, the certificate is falsely issued by some employee of the Postal Department and in that regard some departmental action has also been assured. It also transpires, according to Mr.Jani, that some departmental proceedings have been initiated and report has been submitted by the Inquiring Officer. Under the circumstances, the complaint, on the face of it, is false and deserves to be quashed.

5. Mr.Jani has placed reliance on the decision in the matter of H.V.Jayaram vs Industrial Credit and Investment Corporation of India Ltd reported in AIR 2000 SC 579.

6. Mr.D.P.Joshi, Ld.APP appearing for respondent No.1-State has placed reliance on the affidavit-in-reply filed by the Investigating Officer. He submitted that the scope of quashing of an FIR in a petition under section 482 of Cr.P.C. is very limited as per various decisions rendered by the Apex Court. He has drawn the attention of this court to the complaint and submitted that it can not be said that the offence alleged is not made out from the complaint. He submitted that this court is not supposed to examine the correctness or otherwise or genuineness or otherwise of the allegations made in the complaint, and therefore, the petition can not be entertained and same may be dismissed. He has relied on the decisions in the matters of (i) T.T.Antony & Ors vs State of Kerala & Ors reported in 2001 AIR SCW 2571, (ii) M.Krishnan vs Vijay Singh & Anr reported in 2001 AIR SCW 4142.

7. Mr.Y.S.Lakhani, Ld.Advocate appearing for respondent No.2 submitted that the learned Magistrate has ordered only for investigation as provided under section 156(3) of Cr.P.C., and there is ample material to support the allegations. He submitted that the complaint is supported by communication received from the Chief Post Master General which indicates that the notices were not sent under postal certification whereas the charges debited in the accounts are for postal certification which would indicate that approximately amount of Rs.2,75,000/-has been siphoned out.

8. Mr.Lakhani submitted that so far as the question of jurisdiction is concerned, the Apex Court has in the matters of (i) Trisuns Chemical Industry vs Rajesh Agarwal and (ii) Satvinder Kaur vs State (Govt.of N.C.T.of Delhi), both reported in 1999 Cri.L.J. 4325 and 4566 respectively settled the position and therefore the territorial jurisdiction will not be a factor that may come in the way of investigation as ordered by the learned Magistrate. He also placed reliance on the decision in the matter of State of U.P vs O.P.Sharma reported in 1996 SCC(Cri)497 to support his contention that the scope for petition under section 482 of Cr.P.C for quashing is very limited and the court has to consider the complaint or the FIR as it is without entering into evaluation thereof, and therefore, the

petition may be dismissed.

9. Mr.Jani in reply to the contentions raised by the learned advocates for the respondents submitted that considering the proviso to section 202 of Cr.P.C., more particularly, proviso to Subsection (1) of Section 202, the learned Magistrate ought to have recorded the statement of the complainant and considered the evidence and then passed the order. In the absence thereof, the order passed is bad in law.

10. Having regard to the various contentions raised by learned advocates for parties, at the outset, it may be stated that the scope for a petition under Section 482 of Cr.P.C. has been settled by the Apex Court in the matter of M.Krishnan vs Vijay Singh reported in 2001 AIR SCW 4142 wherein it has been observed that "the revisional or inherent powers for quashing the proceedings at initial stage can be exercised only when the allegations made in the complaint or the FIR, even if taken at their face value or accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution or continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with malafide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him private and personal grudge".

11. Likewise, in the matter of S.M.Dutta vs State of Gujarat reported in (2001) 7 SCC 659 the Apex Court observed that "normal rule is not to interfere with the investigation and criminal proceedings except when the complaint or FIR broadly read does not disclose any offence and can be termed as abuse of process of law".

12. Thus, the test for exercise of inherent powers under Sec.482 of Cr.P.C. is that : Whether on taking the the allegations made in the complaint as they are, without adding or subtracting anything, an offence is made out or not? If no offence is made out, there would

be reason to interfere and exercise powers under section 482 of Cr.P.C.for quashing the complaint. Section 482 of Cr.P.C.grants power to the court to do real and substantial justice, and does not permit its arbitrary use. The powers are supposed to be exercised sparingly to prevent the abuse of process of court or law to secure the ends of justice.

13. With the above settled legal proposition, the case on hand will have to be examined.

14. On perusal of the complaint in question, it is clear that a specific allegation is made regarding siphoning out of large amount of the company by making false entries in the books of accounts, on the basis of certain documents which, prima facie, seem to be not correct or forged. The amount involved is about Rs.2,75,000/-. It has been siphoned out by debiting the amount as if notices to shareholders and creditors were sent under postal certification, whereas, in fact, notices were not sent under postal certification, but were sent as unregistered mail as is evident from the communication from the office of the Chief Post Master General, Ahmedabad circle addressed to the complainant. This aspect gets support from the report of the Investigating Officer, dated 8.7.1999(Annexure III to the affidavit in reply by the respondent No.2). The affidavit in reply of the Investigating Officer indicates that the certificates relied upon in the company petition to indicate that the notices have been duly served are not true. It seems that the certificates purported to have been signed by one Mr.V.M.Oza who was on leave at the relevant time and expired thereafter. It, therefore, can not be said that there is no substance in the allegations made in the complaint or that no offence is made out, accepting the contentions, prima facie, as they are without adding and subtracting anything therefrom. This court is not supposed to consider and evaluate the genuineness of the allegations made in the complaint while considering the question of quashing the complaint. If the contentions raised by the petitioners are to be accepted, that would call for evaluation of the genuineness of the allegations made in the complaint which is not permissible for this court to do.

15. The contention that respondent No.3 and respondent No.4 have no role to play and therefore the complaint qua them needs to be quashed can not be accepted at this stage. It is a defence which is raised by the petitioners which will be considered in light of evidence that may be led at the time of trial on basis of

investigation and defence evidence that may be led, if any. The Investigating Officer will inquire and investigate into whether while auditing the accounts foul play can be attributed to the petitioner No.4 as Auditor or whether any foul can be attributed to the petitioner No.3 as Company Secretary while making entries in the books of accounts.

16. There appears no substance in the contention raised by the petitioners that an attempt is made by the complainant to overreach and override the order passed by this court in the company petitions ordering amalgamation which had dealt with this question and negated the same. The objection raised before this court in the company petitions was regarding the persons giving the certificates having no authority to issue such certificate which is turned down due to failure to point out any provision.

16.1 The allegations made in the complaint do not appear to have been raised before the Bench taking up company matters. The allegations in the complaint are altogether different, namely, siphoning out amount by making false entries in books of account on the basis of false/forged certificates.

16.2 The allegations are, prima facie, supported by communication from postal authorities and therefore the contention can not be accepted as the point in issue in the company petitions and the complaint are totally different.

17. So far as the contention regarding jurisdiction is concerned, reliance was placed by Mr.Jani on the decision in the matter of H.V.Jayaram vs Industrial Credit and Investment Corporation of India Ltd reported in AIR 2000 SC 579 wherein the Apex Court observed that "in light of observations of the Apex Court in H.P.Gupta vs Hiralal (1970) 1 SCC 437 and Section 113 of the Companies Act which inter alia provides that company shall deliver the documents, such as, certificates of shares, debentures and certificates of debenture stocks allotted or transferred in accordance with the procedure laid in Section 53 which prescribes the mode of delivery inter alia by sending the documents by post at registered address and deeming proviso to subsection (2) for delivery of such letter, the cause of action would arise at the place where the registered office of the company is situated". It was, therefore, contended that since the Registered office of the company is situated at

Ahmedabad, the complaint can be lodged in the court at Ahmedabad and not at Godhra. Against this, Mr. Lakhani has placed reliance on the decision of the Apex Court in the matter of Trisuns Chemical Industry vs Rajesh Agarwal reported in 1999 Cri.L.J 4325 wherein it has been held that "quashment of complaint on the ground that the JMFC has no territorial jurisdiction to take cognizance of offence alleged and issue process not proper but also premature". Relying on section 177 it is observed that "the said section provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed"

17.1. Likewise, in the matter of Satvinder Kaur vs State (Govt. of NCT of Delhi) reported in 1999 Cri.L.J. 4566, the question regarding territorial jurisdiction to investigate by police was considered and it was held that "the FIR can not be quashed on the ground that the police do not have territorial jurisdiction to investigate into the offence". Thus, at this stage, when the complaint is lodged and sent to police for investigation under section 156(3) of Cr.P.C. the question of quashing the complaint on the ground of want of territorial jurisdiction would be premature and not proper.

18. So far as the contention regarding non-recording of statement of the complainant before passing the order by the Magistrate is concerned, reliance was placed by the learned advocate for the petitioners on proviso to Subsection (1) of Section 202 of Cr.P.C. which provides that "no such direction for investigation shall be made (a).... (b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200". It may be noted that this proviso is applicable to subsection (1) of section 202 of Cr.P.C., meaning thereby, that it should be a case where the Magistrate acts under section 202 and instead of inquiring into the case by himself, gives a direction to police for investigation. In the instant case, the order in question is passed by the Magistrate in exercise of powers under section 190 of Cr.P.C. to investigate and report under 156(3) of Cr.P.C. and not under section 202 of Cr.P.C., and therefore, the contention of the learned advocate for petitioners can not be accepted.

19. Upshot of the above discussion is that the petition can not be entertained as it can not be said that the allegations contained in the complaint do not constitute any offence, prima facie, and the complaint, therefore, can not be quashed. The petition therefore

merits dismissal and is dismissed. Notice is discharged.
Interim relief stands vacated.

20. At this stage, Mr.Jani, Ld.Advocate appearing for petitioners prays that the operation of this order may be suspended for a period of four weeks from today and the protection granted by way of interim relief may be continued for a further period of four weeks from today to enable the petitioners to approach the Apex Court.

21. Heard the learned advocates for parties on this count. Since the protection granted to the petitioners from the date of institution and has been continued, from time to time, ends of justice would be met if the protection granted earlier is continued for a period of four weeks from today. The operation of this order therefore stands suspended for a period of four weeks from today and the protection granted earlier by way of interim relief shall continue for a period of four weeks from today.

28.11.2001 (A.L.DAVE, J)